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09/634,339	08/08/2000	Evan John Kaye	03092/100G844-US1	4215

7590  
Darby & Darby PC  
805 Third Avenue  
New York, NY 10022

11/30/2005

EXAMINER

TRAN, QUOC A

ART UNIT PAPER NUMBER

2176

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/634,339

Applicant(s)

KAYE, EVAN JOHN

Examiner

Quoc A. Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***DETAILED ACTION***

1. This action is responsive to Amendment filed 09/02/2005.
2. Claims 1-24 are currently pending in this application. Claims 1, 6, 12 and 21 are independent claims.

***Response to Arguments***

3. Applicant's arguments, see Remarks pages 8-9, filed 09/02/2005, with respect to the rejection(s) of claim(s) 1-24 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

It is noted, that using the broadest reasonable interpretation of the claims, the Zhang reference fairly teaches and/or suggests most of the claims' limitations, Zhang discloses a method and system for searching music over the Internet based on melody and rhythms input, the system is composed of database in a client and/or server program over the Internet (see Zhang reference Provisional No. 60/185,566 filed 02/28/2000 at page 1-9), but does not explicitly teach such as, awarding a benefit to the user for the response provided that at least one predetermined criterion is satisfied, permitting multiple human visitors to post the name of the song to the server, wherein the voice clips in the play list are compiled so as to more evenly distribute voice clips to plural users, including the additional step of deleting one or more voice clips from the database in response to at least one predetermined criterion, wherein the user has voice clips downloaded to the client machine which have not been previously downloaded to that user, however upon further consideration, a new ground(s) of rejection is made.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

*Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.*

**Claims 1-24** are rejected under 35 U.S.C. 101, because the claimed invention is directed to non-statutory subject matter. The claims invention set forth non-functional descriptive material but fails to set forth physical structures or materials comprising of hardware or a combination of hardware and software within the technological arts (i.e. a computer) to produce a "useful, concrete and tangible" result. Claims 1, 6, 12 and 21 the "method" reads on a mental construct/abstract idea or at best a computer program, per se. The language such as "A method for identifying, for fostering", does not clearly define structural elements and are not tangibly embodied on a computer readable medium, which are interpreted as software per se, abstract ideas or mental construct and not tangibly embodied on a computer readable medium or hardware.

Regarding claims 2-5, 7-11, 13-20 and 22-24, are rejected for fully incorporating the dependencies of their respective base claims.

Clarification and/or correction are required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding to dependent claim 9, that recites the limitation such as, “**to more evenly**”, which are failing to particularly point out and distinctly claim the subject matter; It is unclear what Applicant’s intended the metes and bounds of the claims are.

Clarification and/or correction are required.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

7. **Independent claims 1-17 and 19-24** are rejected under 35 U.S.C. 103(a) as being unpatentable by Zhang et al. US 20020073098A1- Provisional No. 60/185,566 filed 02/28/2000 (hereinafter Zhang ‘566), in view of Fennell US005695400A - filed 06/30/1996 (hereinafter Fennell ‘400).

**In regard to independent claim 1, inputting a voice clip of a portion of the song into a microphone connected to a client machine (Zhang ‘566 at pages 1-9, discloses a method and**

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-system for searching music over the Internet based on melody and rhythms input, the system is composed of database in a client and/or server program over the Internet, wherein an interface is provided for the user to input the melody. For example, user can record the music or his/her vocal singing with a microphone attached to a computer),

**providing the voice clip to a server connected to the Internet** (Zhang '566 at pages 1-9, discloses a method and system for searching music over the Internet based on melody and rhythms input, the system is composed of database in a client and/or server program over the Internet, wherein an interface is provided for the user to input the melody. For example, user can record the music or his/her vocal singing with a microphone attached to a computer, then sending and receiving to and from the Server program through a web browser (e.g. any standard communication protocols between web client and server)),

**selectively providing further information relating to the song to the server** (Zhang '566 at pages 1-9, discloses a method and system for searching music over the Internet based on melody and rhythms input, the system is composed of database in a client and/or server program over the Internet, wherein an interface is provided for the user to input the melody. For example, user can record the music or his/her vocal singing with a microphone attached to a computer, then sending and receiving to and from the Server program through a web browser (e.g. any standard communication protocols between web client and server)),

**receiving at the client machine an electronic notification from the server that the song has been identified** (Zhang '566 at pages 1-9, particularly at page 6 Returning the query result to the Client program, discloses some major function such as, The server program

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dynamically generate HTML page based on the query result and send it back to client program using standard communication approaches between server and web client).

Zhang '566 does not explicitly teach, **making the voice clip and any further information available to a human visitor to the server**, however (Fennell '400 at col. 2, line 55 through col. 6, line 67, discloses a method of managing multiplayer game playing over the internet, The representation of the game challenge transmitted to the terminals over the network (e.g. Internet) may be audible or visual or both the game challenge may be, e.g., a question (or, as in JEOPARDY, an answer); a visually displayable puzzle; notes of a melody (as in "Name That Tune"); fragments of a quotation requiring players to answer with the complete quotation; or some other audio or visual stimulus. The game challenge may be transmitted in conventional fashion by a suitably programmed host computer of a kind well known in the art. The selection and programming of the host computer and the establishment of a suitable telecommunications connection to the network is a matter of routine for the skilled artisan) Examiner read the above in the broadest reasonable interpretation, wherein the voice clip and any further information and the server would have been an obvious variant of Name That Tune to a host computer, to a person of ordinary skill in the art at the time the invention was made,

**permitting multiple human visitors to post the identification of the song to the server**, however (Fennell '400 at col. 2, line 55 through col. 6, line 67, discloses a method of managing multiplayer game playing over the internet, The representation of the game challenge transmitted to the terminals over the network (e.g. Internet) may be audible or visual or both the game challenge may be, e.g., a question (or, as in JEOPARDY, an answer); a visually displayable puzzle; notes of a melody (as in "Name That Tune"); fragments of a quotation

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requiring players to answer with the complete quotation; or some other audio or visual stimulus. The game challenge may be transmitted in conventional fashion by a suitably programmed host computer of a kind well known in the art. The selection and programming of the host computer and the establishment of a suitable telecommunications connection to the network is a matter of routine for the skilled artisan) Examiner read the above in the broadest reasonable interpretation, wherein to post the identification of the song to the server would have been an obvious variant of Name That Tune to the host computer, to a person of ordinary skill in the art at the time the invention was made,

**receiving at the client machine as electronic notification from the server that the song has been identified**, however (Fennell '400 at col. 2, line 55 through col. 6, line 67, discloses a method of managing multiplayer game playing over the internet, The representation of the game challenge transmitted to the terminals over the network (e.g. Internet) may be audible or visual or both the game challenge may be, e.g., a question (or, as in JEOPARDY, an answer); a visually displayable puzzle; notes of a melody (as in "Name That Tune"); fragments of a quotation requiring players to answer with the complete quotation; or some other audio or visual stimulus. The game challenge may be transmitted in conventional fashion by a suitably programmed host computer of a kind well known in the art. The selection and programming of the host computer and the establishment of a suitable telecommunications connection to the network is a matter of routine for the skilled artisan) Examiner read the above in the broadest reasonable interpretation, wherein to post the identification of the song to the server would have been an obvious variant of Name That Tune to the host computer, to a person of ordinary skill in the art at the time the invention was made. Further more Fennell '400 at col. 2, line 55 through



col. 6, line 67, discloses the signals that are sent to the responding terminals encode one of two messages, which may be paraphrased respectively as "[This terminal] has control" and "[This terminal] is locked out", wherein the winning responding terminal gets control of the game for a stated period (e.g., until the user of that terminal takes a turn or a timeout expires, whichever occurs first), while all losing responding terminals lose control until the game returns to free-for-all mode) Examiner read the above in the broadest reasonable interpretation, wherein electronic notification from the server that the song has been identified would have been an obvious variant of Name That Tune to the host computer, wherein the signals that are sent to the responding terminals encode one of two messages, which may be paraphrased respectively as "[This terminal] has control" and "[This terminal] is locked out", wherein the winning responding to a person of ordinary skill in the art at the time the invention was made.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Zhang '566 teaching provides the methodology and system to search music information over a computer network, especially the Internet, based on melody and rhythm of the music taught by Zhang to include a means of making the voice clip and any further information available to a human visitor to the server, permitting multiple human visitors to post the identification of the song to the server and receiving at the client machine as electronic notification from the server that the song has been identified of Fennell '400. One of ordinary skill in the art would have been motivated to modify this combination for enabling the public utilizing computer networks such as America On-line, to not just watching a game show "Name That Tune" or "Jeopardy" on a television; it is now possible for the public to participate in game shows on a personal computer. A player using a personal computer or other terminal

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connected to a computer network can compete with players using other terminals virtually anywhere in the world that is served by the network (as taught by Fennell at col. 1, line 10 through col. 7, line 5).

**In regard to independent claim 6**, incorporate substantially similar subject matter as cited in claim 1 above, and further view of the following and is similarly rejected along the same rationale,

**Playing the voice clip at the client machine through speakers attach thereto** (Zhang '566 at pages 1-9, discloses a method and system for searching music over the Internet based on melody and rhythms input, the system is composed of database in a client and/or server program over the Internet, wherein an interface is provided for the user to input the melody. For example, user can record the music or his/her vocal singing with a microphone attached to a computer, then sending and receiving to and from the Server program through a web browser (e.g. any standard communication protocols between web client and server), further discloses the operation to the computer sound device (see Zhang '566 at page 5 second paragraph)) Examiner read the client machine through speakers attach thereto would have been an obvious variant of the computer sound device (user interface), to a person of ordinary skill in the art at the time the invention was made,

**awarding a benefit to the user for response provided that at least one predetermined criterion is satisfied**, however (Fennell '400 at col. 2, line 55 through col. 6, line 67, discloses a method of managing multiplayer game playing over the internet, The representation of the game challenge transmitted to the terminals over the network (e.g. Internet) may be audible or visual or both the game challenge may be, e.g., a question (or, as in

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JEOPARDY, an answer); a visually displayable puzzle; notes of a melody (as in "Name That Tune"); fragments of a quotation requiring players to answer with the complete quotation; or some other audio or visual stimulus. The game challenge may be transmitted in conventional fashion by a suitably programmed host computer of a kind well known in the art. The selection and programming of the host computer and the establishment of a suitable telecommunications connection to the network is a matter of routine for the skilled artisan) Examiner read the above in the broadest reasonable interpretation, wherein to post the identification of the song to the server would have been an obvious variant of Name That Tune to the host computer, to a person of ordinary skill in the art at the time the invention was made. Further more Fennell '400 at col. 2, line 55 through col. 6, line 67, discloses the signals that are sent to the responding terminals encode one of two messages, which may be paraphrased respectively as "[This terminal] has control" and "[This terminal] is locked out", wherein the winning responding terminal gets control of the game for a stated period (e.g., until the user of that terminal takes a turn or a timeout expires, whichever occurs first), while all losing responding terminals lose control until the game returns to free-for-all mode) Examiner read the above in the broadest reasonable interpretation, wherein awarding a benefit to the user would have been an obvious variant of Name That Tune to the host computer, wherein the signals that are sent to the responding terminals encode one of two messages, which may be paraphrased respectively as "[This terminal] has control" and "[This terminal] is locked out", wherein the winning responding to a person of ordinary skill in the art at the time the invention was made.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Zhang '566 teaching provides the methodology and system

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to search music information over a computer network, especially the Internet, based on melody and rhythm of the music taught by Zhang to include a means of making the voice clip and any further information available to a human visitor to the server, permitting multiple human visitors to post the identification of the song to the server and receiving at the client machine as electronic notification from the server that the song has been identified of Fennell '400. One of ordinary skill in the art would have been motivated to modify this combination for enabling the public utilizing computer networks such as America On-line, to not just watching a game show "Name That Tune" or "Jeopardy" on a television; it is now possible for the public to participate in game shows on a personal computer. A player using a personal computer or other terminal connected to a computer network can compete with players using other terminals virtually anywhere in the world that is served by the network (as taught by Fennell at col. 1, line 10 through col. 7, line 5).

**In regard to independent claim 12**, incorporate substantially similar subject matter as cited in claim 1 above, and is similarly rejected along the same rationale.

**In regard to independent claim 21**, incorporate substantially similar subject matter as cited in claims 1 and 6 above, and is similarly rejected along the same rationale.

**In regard to dependent claim 2**, wherein the electronic notification includes a **hypertext link to a predetermined page constructable by the server** (Zhang '566 at pages 1-9, particularly at page 6 Returning the query result to the Client program, discloses some major function such as, The server program dynamically generate HTML page based on the query result and send it back to client program using standard communication approaches between server and web client).

**In regard to dependent claims 3-5 and 7**, incorporate substantially similar subject matter as cited in claim 6 above, and is similarly rejected along the same rationale.

**In regard to dependent claim 8**, incorporate substantially similar subject matter as cited in claim 6 above, and further view of the following, and is similarly rejected along the same rationale;

**the plural voice clips comprising a playlist** (Zhang '566 at pages 1-9, particularly at page 6 Returning the query result to the Client program, discloses some major function such as, The server program dynamically generate HTML page based on the query result and send it back to client program using standard communication approaches between server and web client).

**In regard to dependent claim 9**, incorporate substantially similar subject matter as cited in claim 6 above, and further view of the following, and is similarly rejected along the same rationale,

**wherein the voice clips in the playlist are compiled so as to more evenly distribute voice clips to plural users**, however (Fennell '400 at col. 2, line 55 through col. 6, line 67, discloses a method of managing multiplayer game playing over the internet, The representation of the game challenge transmitted to the terminals over the network (e.g. Internet) may be audible or visual or both the game challenge may be, e.g., a question (or, as in JEOPARDY, an answer); a visually displayable puzzle; notes of a melody (as in "Name That Tune"); fragments of a quotation requiring players to answer with the complete quotation; or some other audio or visual stimulus) Examiner read the above in the broadest reasonable interpretation, wherein distribute voice clips to plural users would have been an obvious variant of Name That Tune to the players terminal, to a person of ordinary skill in the art at the time the invention was made.

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It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Zhang '566 teaching provides the methodology and system to search music information over a computer network, especially the Internet, based on melody and rhythm of the music taught by Zhang to include a means of making the voice clip and any further information available to a human visitor to the server, permitting multiple human visitors to post the identification of the song to the server and receiving at the client machine as electronic notification from the server that the song has been identified of Fennell '400. One of ordinary skill in the art would have been motivated to modify this combination for enabling the public utilizing computer networks such as America On-line, to not just watching a game show "Name That Tune" or "Jeopardy" on a television; it is now possible for the public to participate in game shows on a personal computer. A player using a personal computer or other terminal connected to a computer network can compete with players using other terminals virtually anywhere in the world that is served by the network (as taught by Fennell at col. 1, line 10 through col. 7, line 5).

**In regard to dependent claims 10-11, incorporate substantially similar subject matter as cited in claims 1 and 6 above, and further view of the following, and is similarly rejected along the same rationale;**

**including the additional step of deleting one or more voice clips from the database in response to at least one predetermined criterion, wherein the user has voice clips downloaded to the client machine which have not been previously downloaded to that use, Zhang '566 at pages 1-9, particularly at page 2, discloses user interface allow user to perform function such as, edit, replay, clear, re-enter and re-submit input).**

**In regard to dependent claims 13-16**, incorporate substantially similar subject matter as cited in claims 1-2, 6 and 12 above, and are similarly rejected along the same rationale.

**In regard to dependent claims 22-24**, incorporate substantially similar subject matter as cited in claims 1 and 6 above, and are similarly rejected along the same rationale.

**In regard to dependent claim 17, wherein the first user identification information is received automatically from the client machine upon accessing the server** (Zhang '566 at pages 1-9, particularly at page 6 Returning the query result to the Client program, discloses some major function such as, The server program dynamically generate HTML page based on the query result and send it back to client program using standard communication approaches between server and web client).

**In regard to dependent claim 19, wherein the first user identification information is received from the client machine in response to manual input by the first user** (as taught by Zhang at page 3, paragraph [0037], till another object of the present invention is to provide a bi-directional connection is established between the Client Program and the Server Program and Java Applet and JavaScript in an HTML page, wherein user may use one or many of the following ways of user interface to replay, edit, clear, re-enter and submit the input, the phase "user input" is used here in the broadest sense to encompass the approach such as user manually input administrative data such as user name ,etc).

**In regard to dependent claim 20**, incorporate substantially similar subject matter as cited in claims 1 and 6 above, and is similarly rejected along the same rationale.

7. **Independent claim 18** are rejected under 35 U.S.C. 103(a) as being unpatentable by Zhang et al. US 20020073098A1- Provisional No. 60/185,566 filed 02/28/2000 (hereinafter Zhang '566), in view of Fennell US005695400A - filed 06/30/1996 (hereinafter Fennell '400), further in view of Lavanchy et al - US 20050101386A1- Continuation of 09/373,578 filed 08/13/1999 (hereinafter Lavanchy '386).

**In regard to dependent claim 18**, Zhang '566 and Fennell '400 do not explicitly teach, **the first user identification information is received automatically from a cookie stored on the client machine**, however (Lavanchy '386 at page 9, paragraph [00107] though page 10 paragraph [0125], discloses System and method for interactive game-play scheduled based on real-life events, wherein player's login and registration process may use a browser to access a web page having various web pages. If a cookie is present and valid, a message may be displayed, such as welcoming a player and providing access to the web site. If a player selects to login as a different user (e.g., a person has more than one user name, or a different person is using someone else's computer), a cookie is deleted).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Zhang '566 teaching provides the methodology and system to search music information over a computer network, especially the Internet, based on melody and rhythm of the music taught by Zhang to include a means of making the voice clip and any further information available to a human visitor to the server, permitting multiple human visitors to post the identification of the song to the server and receiving at the client machine as electronic notification from the server that the song has been identified of Fennell '400, further to include the first user identification information is received automatically from a cookie stored on



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the client machine of Lavanchy '386 teaching . One of ordinary skill in the art would have been motivated to modify this combination for enabling the public utilizing computer networks such as America On-line, to not just watching a game show "Name That Tune" or "Jeopardy" on a television; it is now possible for the public to participate in game shows on a personal computer. A player using a personal computer or other terminal connected to a computer network can compete with players using other terminals virtually anywhere in the world that is served by the network (as taught by Fennell at col. 1, line 10 through col. 7, line 5, and further discloses by Lavanchy '386 at page 1 paragraphs [0001]-[0020], provides the advantages of real-life competition and allowing a plurality of players to be teamed together, based at least in part on player profiles, and matching teams of players against each other in a competition and to promote competition in the electronic games .

### *Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quoc A. Tran whose telephone number is (571) 272-4103. The examiner can normally be reached on Monday through Friday from 9 AM to 5 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Herndon R. Heather can be reached on (571) -272-4136. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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*Quoc A, Tran*  
*Patent Examiner*  
*Technology Center 2176*  
*November 26, 2005*

*William L Bashore*  
**WILLIAM BASHORE**  
**PRIMARY EXAMINER**  
*11/26/2005*